

Updated: March 12<sup>th</sup>, 2019

## **General Terms and Conditions of Purchase of Allergopharma GmbH & Co.KG**

### **Section 1 Scope of Applicability**

1. These general terms and conditions of purchase ("Terms and Conditions"), which are the only Terms and Conditions of purchase that apply, are an integral element of the agreement ("Contract") entered into between ALLERGOPHARMA and the supplier or contractor (both hereinafter referred to as the "Contractor") in the order of precedence described below:

- (1) The purchase order from ALLERGOPHARMA;
- (2) These Terms and Conditions;
- (3) The Confirmation of Order (as defined in Section 2(2) from the Contractor.

2. Terms and Conditions that conflict with or differ from these Terms and Conditions or other reservations of the Contractor are effective only if they have been expressly accepted in writing by ALLERGOPHARMA in the individual case. Neither the absence of an explicit objection nor ALLERGOPHARMA's acceptance of or payment for Deliverables (as defined in Section 3(1) below) constitute acknowledgment of the Terms and Conditions of the Contractor.

3. These Terms and Conditions shall apply only in the relationship with entrepreneurs.

4. These Terms and Conditions apply for all contracts that are entered into with the Contractor in the future until a subsequent version is published.

### **Section 2 Formation of Contract**

1. Contracts and amendments to contracts are legally binding only if they are entered into in writing by the purchasing department of ALLERGOPHARMA. Contracts that are entered into verbally or by telephone are legally binding only if they are subsequently confirmed in writing by the purchasing department.

2. The Contractor confirms each purchase order ("Confirmation of Order") and states a binding price and a binding delivery date, unless ALLERGOPHARMA expressly waives a Confirmation of Order from the Contractor in the purchase order. If the Confirmation of Order is not received by ALLERGOPHARMA within 10 working days from the receipt of the purchase order, ALLERGOPHARMA is entitled to cancel the order.

### **Section 3 Performance of Services**

1. Unless otherwise stated in the purchase order, the place of performance for the goods to be delivered or the service outcomes to be provided by the Contractor (each "Deliverable" or the "Deliverables") is the place of business of the ALLERGOPHARMA company placing the order. Section 5(2) is not affected by this.

2. The provision of partial Deliverables requires the prior written consent of ALLERGOPHARMA.

3. If the Contractor has reason to assume that it will not be able to fulfill its obligations or a part of its obligations arising from the Contract or to fulfill these on schedule, it has to inform ALLERGOPHARMA of this immediately and state the reasons for this.

4. Should the Contractor not perform the Deliverable at the agreed delivery date, it shall be liable in accordance with the statutory regulations applicable at the time in question. Any contractually agreed penalty for default in the performance of the Deliverable that can be rectified shall represent the minimum amount of damages. If a penalty has been agreed, this can be claimed at any time until the final payment is due, without it being necessary to reserve the right to enforce the penalty.

#### **Section 4 Regulations Governing the Delivery of Goods**

1. The Contractor has to pack the goods at its own expense in such a way that damage is avoided during transport. The Contractor is required to pack, label, and dispatch dangerous goods in accordance with the requirements of the statutory regulations applicable at the time of delivery. Packaging material is to be used only to the extent that is deemed necessary for this purpose. Only environmentally friendly packaging materials may be used.

2. Should a method of delivery be agreed in the Contract in which the transport company is not engaged by ALLERGOPHARMA, the Contractor is required to select the transportation option that is the most cost-effective for ALLERGOPHARMA.

#### **Section 5 Regulations Governing the Performance of Services**

1. The Contractor shall perform the services independently and on its own authority. In particular, it shall bear the responsibility for the outcome, unless otherwise agreed. The use of third parties as subcontractors requires the prior written consent of ALLERGOPHARMA. If consent is issued, the Contractor nevertheless continues to bear the responsibility for the proper performance of the services.

2. The Contractor is free to decide how to organize the performance of the services, in particular to schedule the time required to perform the services and to select the place where it performs the services. ALLERGOPHARMA and the Contractor can make different agreements in this individual case, for example, if this is necessary by way of exception within the framework of a project. For example, the Contractor shall coordinate the time schedule and comply with agreed deadlines if this is required by the cooperation with other parties involved in the project. If a project requires some services to be performed at the premises of ALLERGOPHARMA, it shall meet an appropriate request in this regard if it is able to arrange this.

3. The Contractor shall appoint a contact person (a project manager, for example) for the period in which the services are performed. ALLERGOPHARMA shall communicate specifications concerning the service to be performed exclusively to this contact. The Contractor has the sole authority to issue instructions to the staff it deploys, irrespective of whether these are its own employees or employees of subcontractors. Should the employment relationship with the contact end during the term of the service contract or the contact suffers a long-term illness or is not available as a contact for a lengthy period for other good cause, the Contractor is entitled to appoint a new contact, who is informed of the status of the services when they commence their work.

4. If the elements of the service undertaken to be performed are not fully or not clearly described in the purchase order, but are necessary for the performance of the services (success of the project), these service elements nevertheless have to be performed by the Contractor following consultation with ALLERGOPHARMA.

5. When performing the service, the Contractor shall deploy its own qualified and experienced employees who are able to carry out the services undertaken by Contract to be performed without needing a long time to familiarize themselves with the service. If possible, a permanent workforce shall be deployed during projects. The Contractor shall coordinate the employees in line with the requirements of the project so that the services can be performed in accordance with the Contract and shall ensure that any downtime on the part of the staff it deploys does not lead to the interruption of the project.

6. ALLERGOPHARMA is entitled to demand that an employee of a Contractor be replaced for good cause. This applies in particular if there are doubts about the experience or qualifications required. The Contractor shall arrange for a qualified replacement to be provided in this event. The Contractor can replace an employee without requiring the consent of ALLERGOPHARMA should the employment relationship with the employee be terminated during the term of the service contract or the employee suffers a long-term illness or is not available for a lengthy period for other good cause. The replacement of a Contractor's employee requires the approval of ALLERGOPHARMA in all other cases. All additional costs connected with the replacement of a Contractor's employee, especially for the handover of the work, are borne by the Contractor. Agreed deadlines are not affected by this.

7. The staff deployed by the Contractor shall remain available after the project has ended in order to clarify any technical questions that have arisen in connection with the performance of the service.

### **Section 6 Remuneration / Terms of Payment**

1. The remuneration price specified in the Contract is binding and considered fixed.

2. The Contractor has to render a verifiable account for its Deliverables. Invoice items must in particular be consistent with the order items. The division of the company placing the order, the purchase order number, and the recipient of the Deliverables must be recorded in the invoice.

3. The remuneration must be stated exclusive of the statutory value added tax. The value added tax has to be listed separately in all case.

4. Unless otherwise agreed in writing, payments fall due at ALLERGOPHARMA's discretion either after 14 days less a 3% discount or 60 days net. The 14-day and 60-day time limits start to run on the first day after the goods have been delivered or the service has been performed and the properly issued invoice has been received (date of receipt of invoice). The term "acceptance" shall apply instead of "delivery" if the goods ordered or the service commissioned are subject to an acceptance test or an acceptance process. Payments to the Contractor are made in a weekly, automated payment run.

5. ALLERGOPHARMA is in default only when ALLERGOPHARMA does not make a payment following a reminder from the Contractor.

6. Claims of the Contractor against ALLERGOPHARMA can be assigned only with the explicit written consent of ALLERGOPHARMA. Section 354a BGB remains unaffected. ALLERGOPHARMA is entitled to transfer all or individual rights and duties arising from the Contract to an affiliated company. The consent of the Contractor is not required for this.

7. The Contractor is not entitled to any rights of retention insofar as they are derived from counterclaims arising from other legal transactions with ALLERGOPHARMA.

8. The Contractor may offset only claims of this kind that are uncontested or have been established by final and binding judgment.

### **Section 7 Examination for Defects, Approval, Passing of Risk**

1. ALLERGOPHARMA shall inspect the goods delivered or the services performed within a reasonable period of time following delivery/performance for obvious defects in quality and/or quantity (receiving inspection) and notify the Contractor of defects of this kind within 10 working days after they have been discovered. If no such notice is given within this period, the Deliverables in question are regarded as approved, unless defects are discovered at a later date that were not possible to identify during the receiving inspection. ALLERGOPHARMA shall notify the Contractor of defects that it was not possible to identify during the receiving inspection as soon as they were discovered in the normal course of business. The notification of a defect that is detected at a later date shall be deemed to have been made in time if it is submitted within 10 working days from the date of detection. Payments shall not be construed as a waiver of warranty claims.

2. The date that the notification is sent (postmark) determines whether notices of defects have been sent on time.

3. If the parties have agreed in the Contract that the goods or services are subject to acceptance, the Contractor has to provide them to ALLERGOPHARMA for acceptance as soon as it has performed its Deliverables. Acceptance is documented in writing. ALLERGOPHARMA may not refuse to accept the goods on account of defects that ALLERGOPHARMA has not reported within the meaning of Subsections 1 and 2.

4. The time that the risk is passed is determined by the contractual agreements or by the agreed clause from Incoterms 2010. If no agreement of this kind has been made, the risk is transferred to ALLERGOPHARMA upon the acceptance of the goods or of the service outcomes when they are handed over at the agreed place of performance if the parties have agreed in the Contract that the goods or the service outcomes are subject to acceptance.

### **Section 8 Warranty**

1. The Contractor warrants that the Deliverables are free of defects in quality and title. In the case of goods, the Contractor warrants in particular that they are free of defective materials and workmanship that diminish their value or their suitability for contractual required or normal use.

2. The Contractor is responsible for ensuring that all Deliverables that it performs comply with (a) the agreed requirements, and (b) all laws, legal regulations, DIN, EN and ISO standards and generally recognized rules of technology that apply both for ALLERGOPHARMA and for the Contractor.

3. Should the Deliverables that are performed not meet one or all of the requirements as set out above, ALLERGOPHARMA is entitled to demand that the defect be remedied. The costs for remedying the defect, including any incidental costs, shall be borne by the Contractor. If the subsequent performance is not carried out within a reasonable period

of time set by ALLERGOPHARMA or if the Contractor refuses to provide subsequent performance, ALLERGOPHARMA is entitled to reduce the remuneration or, in the event of a material defect, to rescind the Contract in accordance with the applicable statutory regulations. The statutory rights to compensation of damages, in particular to compensation of damages in lieu of performance, and to the reimbursement of expenses remain unaffected.

4. If the Deliverables performed by the Contractor are subject to acceptance and if the subsequent performance is not carried out within a reasonable period of time set by ALLERGOPHARMA or if the Contractor refuses to provide subsequent performance, ALLERGOPHARMA is entitled – in addition to the rights specified in Subsection 3 above – to remedy the defect itself or to arrange for it to be remedied by a third party at the expense and risk of the Contractor. ALLERGOPHARMA is entitled to demand an advance payment from the Contractor in relation to the expenses that are necessary to remedy the defect.

5. Unless otherwise agreed in writing, the Contractor is liable for defects that arise within 24 months from the date of the receipt of the goods at ALLERGOPHARMA or from the date of acceptance. The warranty period for building services is 5 years from the date of acceptance.

6. If the Contractor has provided a guarantee for the quality or the durability of the goods supplied, ALLERGOPHARMA can additionally assert claims and rights in accordance with the Terms and Conditions of such guaranty.

7. The Contractor indemnifies ALLERGOPHARMA against any product liability claims or claims under the German Product Liability Act that can be attributed to a fault in the goods supplied by the Contractor. The Contractor is required to maintain product liability insurance with reasonable minimum cover during the term of the Contract.

8. Without prejudice to these provisions, the Contractor is liable in accordance with the statutory regulations.

### **Section 9 Liability, Insurance**

1. The Contractor is liable for willful intent and negligence as well as for any fault attached to its performing and vicarious agents and also of any subcontractors as it is for any fault attached to the Contractor itself.

2. The Contractor warrants that it has taken out liability insurance for personal injury, material damage and financial loss, which also includes damage that may arise from the performance of the Deliverables. The sum insured amounts to a minimum of EUR (1) million per insured event. The Contractor shall maintain this insurance cover at least until the end of all relationships arising from this Contract.

### **Section 10 REACH Clause for the Delivery of Goods**

1. The Contractor warrants that it will not deliver any goods to ALLERGOPHARMA that contain or release any substances that require registration or authorization in accordance with Regulation EC No 1907/2006 of December 18, 2006 (REACH Regulation), including any future supplements and amendments, at the time they are delivered to ALLERGOPHARMA, but which are not registered or authorized. If substances within the meaning of Sentence 1 do not require registration on their own, in preparations or in

articles at the time they are delivered to ALLERGOPHARMA only on the basis of the transitional regulations stipulated in the REACH Regulation for phase-in substances, the Contractor warrants that it has either pre-registered these 6/11

substances in the due form and within the due time or satisfied itself that they have been pre-registered by the relevant party subject to the registration requirements in the due form and within the due time. Furthermore, the Contractor warrants that it will inform ALLERGOPHARMA immediately if it becomes apparent to it that a substance pre-registered in accordance with Sentence 2 will not be registered within the transitional period relevant for the corresponding substance and that in this event it will no longer deliver any goods containing such substances to ALLERGOPHARMA from the expiry of the relevant registration period at the latest.

2. The Contractor furthermore warrants to maintain any pre-registration, registration or authorization that is required by the REACH Regulation and that it has carried out for sub-stances contained in or released by the goods delivered to ALLERGOPHARMA throughout the term of the supply relationship with ALLERGOPHARMA. If the Contractor has not pre-registered, registered or authorized the relevant substance itself, it warrants that it has ensured that it will be in-formed immediately of any discontinuation of the pre-registration, registration or authorization. The Contractor furthermore warrants that it will inform ALLERGOPHARMA of the date of any discontinuation of any necessary pre-registration, registration or authorization of any sub-stance delivered to ALLERGOPHARMA immediately after it has become aware of this and that it will no longer deliver any goods containing or releasing such substances to ALLERGOPHARMA from the date of discontinuation.

3. The Contractor warrants that it will transmit to ALLERGOPHARMA an up-to-date and complete safety data sheet that is in compliance with the requirements of the REACH Regulation with each delivery – irrespective of whether the transmission is stipulated as mandatory pursuant to the REACH Regulation or has to be carried out only upon request. If the Contractor has to undertake a chemical safety assessment, it furthermore warrants that it has checked the safety data sheet and, if necessary, adapted it to ensure it is in conformity with the chemical safety assessment. If the transmission of a safety data sheet is neither stipulated as mandatory pursuant to the requirements of the REACH Regulation nor has to be delivered upon request, the Contractor warrants that it will provide information on the registration number (if available) and on any authorization obligation and information on any authorizations issued or refused, information on any restrictions, and any other available and relevant information that is required to identify and implement appropriate risk management measures (safety information) in writing or electronically. Changes to safety data sheets or safety information must be immediately notified to ALLERGOPHARMA and have to be marked in the updated safety data sheet/safety information attached to the first consignment.

4. If the Contractor is required to conduct a chemical safety assessment for a substance contained in or released by any goods delivered to ALLERGOPHARMA and to prepare a chemical safety report, in particular on account of a use of a substance notified by ALLERGOPHARMA, the Contractor warrants that it has conducted this assessment and has recorded the resulting conclusions in the safety data sheet or the safety information.

5. The Contractor warrants that, in the event that articles are delivered to ALLERGOPHARMA containing one or more substances meeting the criteria of Article 57 of the REACH Regulation (i.e. which can be included in the list of substances subject to authorization) and identified in accordance with Article 59(1) of the REACH Regulation (i.e. which have been included in the list of candidates) in a concentration above 0.1%

weight by weight (w/w), it will provide sufficient information to allow safe use of the article.

6. The performance of the above obligations in Subsections 1 to 5 are primary obligations of the Contractor.

7. If the Contractor breaches its obligations arising from Subsection 1 or 2, ALLERGOPHARMA is entitled to rescind the Contract insofar as the goods delivered by the Contractor do not or no longer comply with the requirements of the REACH Regulation. In the event of a breach of the obligations arising from Subsections 3, 4 and 5, ALLERGOPHARMA is entitled to rescind the Contract if the Contractor does not remedy the breach within a reasonable period of time set by ALLERGOPHARMA. Further claims for damages remain unaffected.

8. If a claim is asserted against ALLERGOPHARMA by a third party that has bought goods delivered by ALLERGOPHARMA because the goods supplied do not comply with the requirements of the REACH Regulation, the Contractor is required to indemnify ALLERGOPHARMA upon first written request against these claims insofar as this claim against ALLERGOPHARMA is based on a breach of the Contractor's obligations arising from Subsections 1 to 5. ALLERGOPHARMA is not entitled to make any agreements with the third party, and in particular to conclude a settlement with the third party without the Contractor's approval. The obligation of the Contractor to provide indemnification refers to all expenses that are necessarily incurred by ALLERGOPHARMA arising from or in connection with the claim asserted by the third party, specifically also to legal defense and administrative costs as well as all costs associated with procuring necessary replacement.

### **Section 11 Rights of Use and Intellectual Property Rights / Other Copyrights in the Performance of Services**

1. ALLERGOPHARMA is entitled to the exclusive, indefinite, global, unlimited, irrevocable and transferable right to use the service outcomes. The service outcomes include in particular all documents, presentations, reports, and logs that the Contractor produces in connection with the performance of the services. The right of use extends to all known types of use and, in addition to the right of use, also includes the right to edit and modify, including to use and reproduce, the relevant outcomes arising here as well as to process them accordingly.

2. The granting of the comprehensive right of use is fully settled by the remuneration based on the service contract.

3. ALLERGOPHARMA acknowledges that the Contractor is entitled to the rights of ownership and disposal in all templates, methods, aids, and tools in which the Contractor already had rights of ownership and disposal before the project commenced ("Starting Material"). If the Starting Material has been incorporated in the service outcomes, the Contractor grants to ALLERGOPHARMA a right to use this Starting Material that is non-exclusive, but consistent in all other respects with the right to use the service outcomes (pursuant to Subsection 1).

4. The Contractor is required to perform its Deliverables free of any third-party rights (especially patents, licenses, or other intellectual property rights of third parties). The Contractor shall indemnify ALLERGOPHARMA upon first request against all related

demands and claims. If third-party rights are nevertheless infringed by the Deliverables as such or by their use, the Contractor shall – if this is permitted by law – modify the Deliverables in question at its own expense without undue delay such that the Deliverables in question preclude proprietary rights or obtain for ALLERGOPHARMA the right to use the Deliverables without encumbrance. Further claims and rights are reserved for ALLERGOPHARMA.

### **Section 12 ALLERGOPHARMA's Right of Termination**

1. If the Contract involves the performance of service, ALLERGOPHARMA has the right to terminate the service contract in full or in part at any time by giving five days' notice without stating the reasons for this. Termination is permitted in particular if ALLERGOPHARMA is of the opinion that the success of the service cannot be achieved. The Contractor has to document the work result achieved up to termination and hand this over to ALLERGOPHARMA together with all accompanying documents.
2. ALLERGOPHARMA can terminate a contract for the performance of work results (contract to produce a work) in full or in part at any time up until the work is completed.
3. The right to terminate the Contract without notice for good cause remains unaffected.

### **Section 13 Confidentiality**

1. The Contractor undertakes to handle all information that is communicated to it by or in the name of ALLERGOPHARMA in strict confidence during the term of the Contract and for a period of 5 years after the Contract has ended. The Contractor may use information of this kind for no other purpose than to fulfill the obligations arising from the Contract; all information of this kind remains the property of ALLERGOPHARMA. The information may be disclosed to employees of the Contractor and any subcontractors only insofar as this is necessary in order to fulfill the obligations arising from the Contract.
2. The above-mentioned non-disclosure obligation does not apply to information for which the Contractor can furnish proof that:
  - (1) it was already publicly known at the time of disclosure or subsequently became known through no fault of the Contractor; or
  - (2) it was validly made available to the Contractor by an independent third party that was entitled to do so; or
  - (3) it was already known to the Contractor and was not subject to any non-disclosure obligation at the time the information was received from ALLERGOPHARMA; or
  - (4) it has been developed independently by the Contractor without using the information; or
  - (5) the Contractor has been required to disclose the information on account of a statutory provision, regulation, or official obligation of a government agency or authority if (a) this is notified to ALLERGOPHARMA in such good time that ALLERGOPHARMA can apply for a safeguard measure concerning the information and (b) information is subsequently disclosed only insofar as this is necessary to fulfill the obligation, irrespective of whether a safeguard measure is complied with.

Information that consists of several elements are exempted from the non-disclosure obligations only if the information as a whole falls under at least one of the above-mentioned exceptions.

3. The Contractor has to hand over to ALLERGOPHARMA or delete all information it has received and processing or utilization results produced unless there is a statutory obligation to store the information or results.

#### **Section 14 Data Protection**

1. All information relating to an identified or identifiable natural person ("Personal Data") that

- (i) one party has received from the other party and/or
- (ii) is processed by the Contractor

shall be processed by this party in the context of the performance of the Deliverables as part of the Contract only in strict compliance with the applicable laws, especially all applicable data protection regulations (in particular the EU General Data Protection Regulation, GDPR). The Contractor shall process Personal Data exclusively in order to perform its obligations under the Contract. It shall handle the Personal Data in strict confidence and store them only as long as this absolutely necessary by law or is required to perform its Deliverables based on the Contract.

2. The Contractor shall inform its employees that are involved of the processing of their Personal Data by ALLERGOPHARMA as part of the Contract, such that ALLERGOPHARMA fulfills its obligations to provide information in accordance with the applicable data protection regulations; if the Contractor fails to provide details of the complete information in a verifiable manner, ALLERGOPHARMA will provide this information on request. Without prejudice to the rights of inspection/audit of ALLERGOPHARMA as part of the Contract and/or of the applicable laws, the Contractor shall promptly, upon request and at no cost to ALLERGOPHARMA, provide the information that ALLERGOPHARMA reasonably requires in order to determine whether Personal Data that are subject to the Contract is or has been processed by the Contractor or an authorized subcontractor (if applicable) in compliance with the applicable laws on data protection and Section 14 of these Terms and Conditions.

3. The Contractor shall inform ALLERGOPHARMA immediately in writing if it becomes aware of a security breach that leads to the accidental or unlawful destruction, loss, modification, unauthorized disclosure of Personal Data or unauthorized access to Personal Data that are subject to the Contract ("Data Breach"). ALLERGOPHARMA can request other relevant information concerning the Data Breach, including, but not limited to, an appropriately detailed description of the Data Breach and the categories of Personal Data that are affected by the Data Breach.

4. If Personal Data are processed by the Contractor on behalf of ALLERGOPHARMA such that the Contractor acts as a processor, the parties shall agree all necessary processing contracts on the basis of ALLERGOPHARMA's templates in order to comply with the applicable data protection regulations.

5. If the parties jointly define the purposes and means of the processing of the Personal Data as "joint controllers", the parties shall agree in writing the arrangement on the joint responsibility on the basis of ALLERGOPHARMA's templates, in which their respective responsibilities for compliance with the applicable data protection regulations are defined and which applies in addition to the other provisions in this Section 14.

6. If the GDPR applies, the Contractor may not process or transmit the Personal Data subject to the Contract in or to a country outside the EU, the European Economic Area

(EEA) or Switzerland without the prior written consent of ALLERGOPHARMA; this consent is provided by entering into an additional agreement (on the basis of ALLERGOPHARMA's templates or the EU's standard contractual clauses). If the GDPR is not applicable, the Contractor processes Personal Data without the prior written consent of ALLERGOPHARMA and without entering into any additional agreement that may be necessary (on the basis of ALLERGOPHARMA's templates) only within the borders of the country in which the ALLERGOPHARMA company entering into the Contract has its registered office.

7. If ALLERGOPHARMA consents to the use of subcontractors and the Contractor has access to Personal Data that are subject to the Contract, the Contractor shall engage the subcontractor as a processor within the framework of a Contract (if necessary including the EU standard contractual clauses) that complies with the applicable data protection regulations and ensures that the subcontractor fulfills the obligations of the Contractor in accordance with this Section 14.

### **Section 15 Compliance Obligations**

1. ALLERGOPHARMA intends to perform its business activities in compliance with labor, environmental and social standards and in this process to follow the standards contained in the MERCK Code of Conduct and the MERCK Human Rights Charter (available at <http://www.merckgroup.com>). The Contractor complies with comparable labor, environmental and social standards and guarantees that its subcontractors and suppliers also comply with these standards. The Contractor furthermore confirms and guarantees that the Contractor and its subcontractors and suppliers are familiar with the provisions of the US Foreign Corrupt Practices Act ("FCPA"), the British anti-corruption law ("UK Bribery Act") and with the locally applicable laws for combating bribery and corruption and that they do not undertake or tolerate any actions that constitute a breach or lead to a breach by MERCK of the FCPA, the UK Bribery Act or locally applicable laws for combating bribery and corruption as well as of labor, environmental and social standards or of the MERCK code of conduct or the MERCK Human Rights Charter (referred to in summary as "inadmissible practices").

2. In addition to all other rights to which ALLERGOPHARMA is entitled within the framework of the Contract, ALLERGOPHARMA can, if there is sufficient suspicion or notification from the Contractor that an inadmissible practice has taken place, inspect business buildings and premises, accounting records and business documents of the Contractor that are connected to the inadmissible practice or have these inspected by an independent auditor with the purpose of guaranteeing compliance by the Contractor with the obligations stated in this Section 15. The Contractor must inform ALLERGOPHARMA immediately and in writing of incidents of this kind.

3. If adequate proof is presented to ALLERGOPHARMA that the Contractor or its subcontractors or suppliers have breached the above-mentioned obligations, ALLERGOPHARMA can terminate the Contract without notice by writing to the Contractor.

### **Section 16 Loyalty**

1. The parties undertake to be loyal to each other. They shall in particular refrain from headhunting employees who have been deployed to fulfill the Contract. This does not exclude general job advertisements and appointments resulting from this.

2. The Contractor is not permitted to refer to its business relationship with ALLERGOPHARMA in its information or advertising material or otherwise use the ALLERGOPHARMA brand name without the prior written consent of ALLERGOPHARMA.

**Section 17 Severability**

If a provision of the Contract, including these Terms and Conditions, is or becomes invalid or unenforceable, the validity of the remaining provisions shall not be in any way be affected or impaired by this. In such event, the invalid or unenforceable provision shall be replaced by the parties by a valid or enforceable provision which reflects as closely as possible the economic intent of the invalid or unenforceable provision.

**Section 18 Applicable Law / Place of Jurisdiction**

The Contract, including these Terms and Conditions, is subject to German law; conflict of law provisions and the UN Convention on Contracts for the International Sale of Goods shall not apply. The venue for all disputes arising out of or in connection with the contractual relationship is Reinbeck. This shall also include the general place of jurisdiction of the Contractor for proceedings that are instituted by ALLERGOPHARMA.